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14 IN THE UNITED STATES DISTRICT COURT
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16 EASTERN DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,
18
19 Plaintiff,
20
21 v.
22
23 DAVID ALLEN JONES,
24
25 Defendant.

16 CASE NO. 1:20-CR-00115-DAD
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18 STIPULATION REGARDING EXCLUDABLE
19 TIME PERIODS UNDER SPEEDY TRIAL ACT;
20 AMENDED ORDER
21
22 DATE: June 29, 2021
23 COURT: Hon. Dale A. Drozd
24

25 This case is set for sentencing on June 29, 2021. On May 13, 2020, this Court issued General
26 Order 618, which suspends all jury trials in the Eastern District of California “until further notice.”
27 Further, pursuant to General Order 611, this Court’s declaration of judicial emergency under 18 U.S.C.
28 § 3174, and the Ninth Circuit Judicial Council’s Order of April 16, 2020 continuing this Court’s judicial
emergency, this Court has allowed district judges to continue all criminal matters to a date after May 2,
2021.¹ This and previous General Orders, as well as the declarations of judicial emergency, were
entered to address public health concerns related to COVID-19.

29 Although the General Orders and declarations of emergency address the district-wide health
30 concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision
31 “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record
32

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34 ¹ A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the
35 request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order
36 will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-
 2 record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
 3 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
 4 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
 5 findings on the record "either orally or in writing").

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 7 and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial
 8 emergency require specific supplementation. Ends-of-justice continuances are excludable only if "the
 9 judge granted such continuance on the basis of his findings that the ends of justice served by taking such
 10 action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C.
 11 § 3161(h)(7)(A). Moreover, no such period is excludable unless "the court sets forth, in the record of
 12 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
 13 such continuance outweigh the best interests of the public and the defendant in a speedy trial." *Id.*

14 The General Orders and declaration of judicial emergency exclude delay in the "ends of justice."
 15 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not directly address
 16 continuances stemming from pandemics, natural disasters, or other emergencies, this Court has
 17 discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-
 18 week ends-of-justice continuance following Mt. St. Helens' eruption. *Furlow v. United States*, 644 F.2d
 19 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed.
 20 *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to
 21 exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency).
 22 The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated
 23 by the statutory rules.

24 In light of the societal context created by the foregoing, this Court should consider the following
 25 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 26 justice exception, § 3161(h)(7) (Local Code T4).² If continued, this Court should designate a new date
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28 ² The parties note that General Order 612 acknowledges that a district judge may make
 "additional findings to support the exclusion" at the judge's discretion. General Order 612, ¶ 5 (E.D.
 Cal. March 18, 2020).

1 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
2 pretrial continuance must be “specifically limited in time”).

3 **STIPULATION**

4 Plaintiff United States of America, by and through its counsel of record, and defendant, by and
5 through defendant’s counsel of record, hereby stipulate as follows:

6 1. By previous order, this matter was set for sentencing on June 29, 2021.

7 2. By this stipulation, defendant now moves to continue the sentencing until July 19, 2021,
8 and to exclude time between June 29, 2021, and July 19, 2021, under 18 U.S.C. § 3161(h)(7)(A), B(iv)
9 [Local Code T4].

10 3. The parties agree and stipulate, and request that the Court find the following:

11 a) Counsel desires additional time to further prepare for sentencing of this matter.

12 b) Counsel believes that failure to grant the above-requested continuance would
13 deny him/her the reasonable time necessary for effective preparation, taking into account the
14 exercise of due diligence.

15 c) The government does not object to the continuance.

16 d) Based on the above-stated findings, the ends of justice served by continuing the
17 case as requested outweigh the interest of the public and the defendant in a trial within the
18 original date prescribed by the Speedy Trial Act.

19 e) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
20 et seq., within which trial must commence, the time period of June 29, 2021 to July 19, 2021,
21 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]
22 because it results from a continuance granted by the Court at defendant’s request on the basis of
23 the Court’s finding that the ends of justice served by taking such action outweigh the best interest
24 of the public and the defendant in a speedy trial.

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f) The parties also agree that this continuance is necessary for several reasons, including but not limited to, the need to permit time for the defense to continue its investigation and preparation for sentencing, specifically investigation into pending state court matters, pursuant to 18 U.S.C. § 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv).

IT IS SO STIPULATED.

Dated: June 16, 2021

PHILLIP A. TALBERT
Acting United States Attorney

/s/ STEPHANIE M. STOKMAN
STEPHANIE M. STOKMAN
Assistant United States Attorney

Dated: June 16, 2021

/s/ MEGHAN MCLOUGHLIN
MEGHAN MCLOUGHLIN
Counsel for Defendant
DAVID ALLEN JONES

ORDER

Sentencing Hearing in this action is continued from June 29, 2021, to July 20, 2021, at 09:00 a.m. before District Judge Dale A. Drozd.

IT IS SO ORDERED.

Dated: **June 17, 2021**

Dale A. Droyd
UNITED STATES DISTRICT JUDGE